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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,521	10/27/2003	Dirk Luthardt	01048	9479

7590 05/27/2005

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EXAMINER

NGUYEN, THONG Q

ART UNIT PAPER NUMBER

2872

DATE MAILED: 05/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,521

Applicant(s)

LUTHARDT ET AL.

Examiner

Thong Q. Nguyen

Art Unit

2872

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 6-11 and 13 is/are allowed.
6) ☒ Claim(s) 1-5, 12 and 14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 25 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The present Office action is made in response to the amendment filed on 3/25/2005. It is noted that in the amendment, applicant has made changes to the specification, the drawings and the claims. Regarding to the claims, applicant has amended claims 4, 6, 10 and 11 and added a new claim, i.e., claim 14, into the application. The pending claims 1-14 are examined in this Office action.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

3. The corrected figure 3 was received on 3/25/05. The corrected figure 3 is approved by the Examiner.

Specification

4. The lengthy specification which was amended by the amendment of 3/25/05 has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-5, 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Leica Company brochure submitted by applicant in view of Kashiba et al (Japanese reference No. 2-3003, of record).

The Leica Company brochure discloses a telescope having a mechanism for moving a lens system for focusing. The mechanism disclosed in the mentioned brochure as described in page 2 of the present specification comprises a coarse drive and a fine drive for focusing. An actuating element of the coarse drive is connected to the output shaft wherein a rotational movement of the output shaft is transmitted to a spindle via a toothed belt. An actuating element of the fine drive is connected to the output shaft via a drag gear. The use of two actuating elements for coarse and fine focusing mounted on the frame of the telescope and spaced relationship to each other is shown in the figure on the front page of the brochure. It is noted that the Leica company brochure does not disclose the use of a fine drive system having a belt for driving the output shaft during a fine focusing process.

However, the use of a mechanism for fine focusing process wherein the mechanism comprises a belt drive is known to one skilled in the art as can be seen in the telescope provided by Kashiba et al. In particular, Kashiba et al disclose a mechanism comprises a coarse focusing mechanism and a fine focusing mechanism wherein the fine focusing mechanism comprises a belt and pulleys which mechanism has a larger reduction ratio than that of the coarse focusing mechanism. See pages 2-3 and figures 1-2 and the English abstract.

Regarding to the feature that the position of the focusing optic is more precise by a factor of three in a fine focusing than that provided by the coarse focusing as recited in present claim 12 and the focus optic is displaced over a path greater by a factor of three when actuating the coarse drive unit for the same angular movement as recited in newly-added claim 14, such features are an obvious matter within the level of one skilled in the art in the process of adjustment the ratio between the two focusing mechanism for meeting a particular design. See *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980); *In re Aller*, 105 USPQ 233. Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the telescope having a coarse focusing mechanism and a fine focusing mechanism as disclosed in the Leica Company brochure by using a fine mechanism having a drive belt as suggested by Kashiba et al for the purpose of preventing the backlash and the providing a precise operation of the system over time.

Allowable Subject Matter

7. Claims 6-11 and 13 are allowed.
8. The following is a statement of reasons for the indication of allowable subject matter: See the reasons as set forth in the previous Office action.

Response to Arguments

9. Applicant's arguments filed on 3/25/05, pages 15-17, have been fully considered but they are not persuasive.

a) Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

b) In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

c) In response to applicant's argument that Kashiba et al discloses that the focus optic is displaced via only one operator-controlled element, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references.

Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Applicant is respectfully invited to review the rejection in which the art of Kashiba et al is used to show to one skilled in the art the use of a drive unit having belt and pulleys for controlling the operation of a fine drive unit. The Examiner has not tried to incorporate the structure of the focus optic provided by Kashiba et al into the focus optic provided by the Leica Company brochure.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

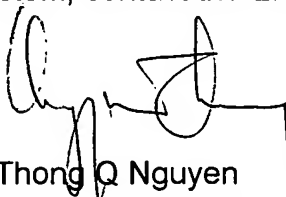
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2872

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thong Q. Nguyen
Primary Examiner
Art Unit 2872

Replacement Sheet
Serial No. 10/693,521

*Entry approved
5/26/05*

